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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,353	04/25/2002	John Alfred Wilkinson	B0192/7033	1376

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WOLF GREENFIELD & SACKS, PC
FEDERAL RESERVE PLAZA
600 ATLANTIC AVENUE
BOSTON, MA 02210-2211

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/02/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10 019353

Applicant(s)

WILKINSON

Examiner

NEK LEY

Group Art Unit

1616

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8/7/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-17, 19-30, 32-46, 48-72 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-17, 19 & 33 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-17, 19-30, 32-46, 48-72 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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Applicant's election without traverse of Group I, species salvia, Human, Head Lice, gel in Paper No. 8 is acknowledged.

Claims 10, 20-30, 32, 34-46, 48-72 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8, 12, 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Preferably-" is indefinite; please amend; make dependent, maybe. It is unclear what is diluted in 12; the salvia or the composition; and if the latter, is it still a gel. We don't know what "associated" means in context of the intended claim limitations.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1-5, 9, 12, 13, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Scesa et al WO 97/17944.

See example 4: Salvia extract, essential oil, as a gel, with antipruritic agents, camomile, with hazel, and gel based on a jar (p.3, bottom, p.4 bottom) alginate at 0.1-5%, with water and up to 5% essential oils-glycolic extracts (p.5, 1).. This is the instant composition, for human skin application; no patentable weight given to future intended use.

Claims 1-5, 7-9, 11, 12, 19, and 33 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Eini et al EP 0495684.

Essential oil of Salvia, sage, at 0.01-50% shown effective to treat people with head lice (p.2, ¶ 3 and summary) in gel form, p.7, lines 29-31. Lice Free Gel is shown as 2% essential oil, 1% carbomer; 47% water; antipruritic agents are evident: methyl lactate, triethanolamin (p.7-results).

Citrus is also shown, as Limoneve, pineres, terpinene, found in citrus, are also effective. Thus, claim 11 would also be an obvious over Eini, as all of the formulations are preparable in various formulations, solutions, gels cream (p.2, lines 49-55).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-17, 19 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wark -GB 2341091 and Eini et al-EP 0495684 in view of coats 4178372.

Wark teaches Head Lice controllable on people by applying compositions of essential oils, salvia, citrus at 0.1-5% (p.5, 6). Gels are not specified.

Eini (above) also treats head lice, using any formulation, but also gel, of sage and citrus extracts and terpenoid components. Neither apply aloe vera. Coats does, showing how to provide a hypoallergenic gel of aloe, able to be applied even to face, without allergenic-thus, itching, sensation (col.2, summary).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a plant treatment to use any of art recognized means, including the essential oil and extracts of Wark and Eini, in order to provide safe lice treatment, with the gel of coats, in order to reduce itching. The particular gel and formulation ingredients are all art recognized, and other than the advantageous hypoallergenic aloe, equivalents useful and within the purview of one of ordinary skill in the art to practice.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

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Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

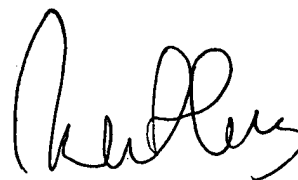
The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved lice control as is well known in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd
August 29, 2003

A handwritten signature in black ink, appearing to read 'Neil S. Levy', with a stylized, cursive script.

NEIL S. LEVY
PRIMARY EXAMINER